IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 12646 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GYANIBEN MOHANCHAND PUNJABI & 5 - Applicants
Versus
MUSKAN ALIAS PUNAMBEN INDRAJITPUNJABI, & 1 - Respondents

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Appearance :
MR YV BRAHMBHATT for Applicants : 1 - 6.
MR PRABHAV A MEHTA for Respondent: 1,
MR MA PATEL ADDL PP for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 04/09/2006

ORAL JUDGMENT

1. Heard learned counsel Shri Brahmbhatt for the applicants, Shri Mehta, learned counsel for the respondent No. 1 and Shri Patel, learned

Addl.P.P. for the respondent No. 2 State of Gujarat.

2. Rule. Mr. Mehta, learned advocate waives service of Rule on behalf of respondent No. 1 and Mr. Patel, learned APP waives service of Rule on behalf of respondent No. 2 – State of Gujarat. With the consent of the parties, Rule is fixed forthwith.

3. Shri Brahmbhatt, learned counsel appearing for the applicants has made a statement at the Bar that he is confining his submission for quashing the complaint only on the ground of want of jurisdiction in the learned Magistrate, who has issued the process on 1.4.2004.

4. The applicants have preferred this application under Section 482 of the Code of Criminal Procedure and also under Section 117 and 118 of the Code of Criminal Procedure seeking quashment of the private complaint filed by the respondent No. 1 before the learned JMFC, Dediyapada as Criminal Case No. 236 of 2004 alleging commission of offence under Sections 498-A, 323, 336, 504, 506(2) read with Sections 114 and 313 of the Indian Penal Code and also under Section 3, 5, and 7 of the Dowry Prohibition Act. The learned Magistrate after verification, took cognizance and issued process vide order dated 1.4.2004. The same is under challenge before this Court.

5. Shri Brahmbhatt, learned counsel for the applicants has stated that except bare

allegations with respect to administering of threats at Selamba to the respondent No. 1, there is no whisper about any incident of cruelty etc. perpetrated at Selamba, where the respondent No. 1 resides i.e. her parental house. The allegation does not inspire any confidence and the same appears to have been made only with a view to invoke the jurisdiction of Selamba, the Court of Dediyapada. Shri Brahmbhatt has relied upon decision of the Apex Court in case ***V. ABRAHAM VS. INSPECTOR OF POLICE, CHENNAI & ANR., reported in 2005 (1) GLH p.22*** and also in case of ***UPENDRASINH ACHALSINH RAJPUT & ORS. VS. STATE OF GUJARAT, reported in 1997 (1) GLR p.504,*** in support of his submission that in such a case, the process have been quashed. Shri Brahmbhatt, therefore, submitted that he is confining his submission only viz-a-viz issuance of process and he urges that this court may not deal with other submissions on merits for quashing.

6. Shri Mehta, learned counsel appearing for the respondent No. 1 has also confined his submission in respect of maintainability of the complaint at Dediyapada only and addressed this Court on the aspect of the issuance of process by the learned Magistrate and has supported the issuance of process by Dediyapada Court. Shri Mehta has relied upon the decision of this Court in case of ***BHUPESHKUMAR NAVNITLAL THAKKAR VS. STATE OF GUJARAT, reported in 2003(2) GLH***

(U.J.)p.1 and also drawn the attention of this Court in case of ***SUJATA MUKHERJEE (SMT) VS. PRASHANTKUMAR MUKHERJEE, reported in (1997) 5 SCC p.30*** and also the Apex Court decision in case of ***SATVINDRER KAUR VS STATE (GOVT. OF NCT OF DELHI) AND ANOTHER, reported in (1999)8 SCC p.728*** in support of his submission that Section 177 of Cr.P.C. may not be lost site of, that offence of cruelty under Section 498-A of IPC being continuous offence, the Court at Dediyapada had also jurisdiction to issue process and try the complaint. Shri Mehta has also confined his submission in respect of the maintainability of the complaint and trial at Dediyapada only.

7. This Court is unable to accept the submission of Shri Mehta. The decision in case of Bhupeshkumar (Supra) is not applicable in the facts and circumstances of the present case. In that case, the process was also issued for the offence punishable under Section 406 of IPC when the complaints therein contain sufficient averments indicating acts and omissions leading to commission of offence at the place of issuance of process, whereas, in the instant case looking to the order, issuing process, it appears that it is issued only in respect of the offences punishable under Sections 498-A, 223 read with Section 114 of the IPC. The averments made in the complaint go to show that no cause of action has arisen at Selamba. Shri Mehta has fairly

submitted that one cannot overlook the fact averments made on page 5, 6 and 7 in the memo of the complaint, taken as they are go to show that only telephonic threats were administered to the wife complainant at Selamba, Dediyapada. The same also do not inspire any confidence as it appears to have been made for the sole purpose of invoking jurisdiction of the Court of Dediyapada. Another decision in case of Satvindar Kaur (Supra) was in respect of territorial jurisdiction of Police to initiate investigation and it has no applicability in the facts and circumstances of the present case. The complaint is not maintainable before the Court at Dediyapada as no cause of action could be said to have arisen at Selamba Dediyapada. The Apex Court had quashed the process in such circumstances in case of (2004) 8 SCC 100. The same decision is also referred to in another case of ***Ramesh Kumari Vs. State of Tamilnadu*** reported in AIR 2005 SC 1989 and ordered transfer of the case on the ground of lack of jurisdiction in the Court issuing the process. In view of these decisions of the Apex Court, it is clear that present petition deserves to be allowed. In the facts and circumstances of the present case and the decision of the Apex Court in case of ***Y.ABRAHAM AJITH AND OTHERS vs. INSPECTOR OF POLICE, CHENNAI AND ANOTHER,*** reported in (2004) 8 SCC 100, wherein, the Apex Court has held that if the averments does not

contain any cause of action in the Court to issue process, then the same may be quashed and this judgment has been referred to by the Apex Court in the case of ***RAMESH AND OTHERS vs. STATE OF TAMIL NADU,*** reported in AIR 2005 SC 1989, this Court is therefore, of the considered view that as no cause of action has arisen at Selamba, the Court at Dediyapada did not have the jurisdiction to issue the process and try the offences in the impugned complaint. Therefore, the process is required to be quashed. Accordingly, the order dated 1.4.2004 passed by the learned JMFC, Dediyapada in Criminal Case No. 236 of 2004 issuing the process is quashed and set aside. Before parting, it is clarified that as the counsels of both the sides confined their submissions on the aspect of maintainability of the complaint at Dediyapada, no submission were advanced on the other aspects of the complaint. This order has also therefore confined this decision only to the point of jurisdiction of the Court at Dediyapada to try the offences alleged in the complaint. The complainant is therefore, at absolutely liberty to take appropriate course available to her as only the order of issuing the process by the Dediyapada Court is quashed. Application is disposed of accordingly. Rule is made absolute to the aforesaid extent only. Direct service permitted.

(S.R.BRAHMBHATT, J.)

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